

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2683 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

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AJAYDEEP COOPERATIVE HOUSING SOCIETY LTD

Versus

STATE OF GUJARAT

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Appearance:

Shri A.S. Vakil, Advocate, for Shri S.B. Vakil,  
Advocate, for the Petitioner

Shri A.G. Uraizee, Assistant Government Pleader,  
for the Respondent

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 07/08/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (the respondent herein) on 2nd March 1995 is under challenge in this petition under articles 226 and 227 of the Constitution of India. By the impugned order,

the respondent cancelled the exemption granted on 29th July 1989 under sec. 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) with respect to certain parcels of land in all admeasuring 47935 square meters (the disputed lands for convenience).

2. The facts giving rise to this petition move in a narrow compass. It appears that exemption under sec. 20(1) of the Act with respect to the disputed lands was granted by the order passed by and on behalf of the State Government on 29th July 1989 for selling them to the petitioner on certain terms and conditions. Its copy is at Annexure C to this petition. It was stipulated thereunder that the disputed lands were to be used only for residential purpose and for no other purpose. It was also stipulated therein that there were 300 members of the petitioner-society and no member should be allotted any plot in excess of 200 square meters. By that condition it was understood that the petitioner was required to construct 300 dwelling units not exceeding 200 square meters each. It appears that the petitioner raised in all 1018 dwelling units as a complex of flats in the disputed lands. The petitioner also constructed some 7 shops therein. No prior permission of the respondent was taken for the purpose. It came to the notice of the concerned officer of the respondent that certain conditions contained in the order at Annexure C came to be thus violated by and on behalf of the petitioner. Thereupon a show-cause notice came to be issued on 30th March 1993 calling upon the petitioner and the original owner of the disputed lands to show cause why the exemption granted by the order at Annexure C to this petition should not be withdrawn. Its copy is at Annexure D to this petition. It may be mentioned at this stage that one condition mentioned in the order at Annexure C to this petition required the petitioner to complete the construction activity within 2 years from the date of the order. It appears that the petitioner did not complete the construction work within the stipulated time-limit of 2 years. That ground was also mentioned in the show-cause notice at Annexure D to this petition. It appears that the petitioner had made an application for extension of the time-limit by 2 years for completing the construction work. It made further application for the purpose setting out some more details on 4th June 1993. Its copy is at Annexure E to this petition. It appears that the said application remained pending with the respondent. The petitioner however filed the reply to the show-cause notice on 18th October 1993. Its copy is at Annexure H to this petition. By the order passed by and on behalf of the respondent on

2nd March 1995, the exemption granted by the order at Annexure C to this petition came to be cancelled. Its copy is at Annexure A to this petition. The aggrieved petitioner has thereupon moved this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning its correctness.

3. The petitioner has constructed the shops after obtaining the necessary permission from the local authority. The petitioner has relied on one circular issued by and on behalf of the respondent on 16th January 1988 requiring co-operative societies to allow construction of shops at the rate of 1 shop for 20 dwelling units for the facilities of member occupants of the dwelling units constructed by such societies. Its copy is at Annexure B to this petition. Keeping in mind the aforesaid circular at Annexure B to this petition, the petitioner obtained permission for construction of shops from the local authority and it appears that they have been granted permission to construct 7 shops by the local authority. It thus becomes clear that the petitioner has constructed shops keeping in mind the the government circular at Annexure B to this petition.

4. It is true that the petitioner ought to have moved the respondent for modification of the relevant condition in that regard in the order at Annexure C to this petition. This Court had however an occasion to consider such case in Special Civil Application No. 6248 of 1991 decided on 9th March 1995. A copy of the judgment of this Court in the aforesaid matter is at Annexure L to this petition. It transpires from the facts of that case that some 27 shops were constructed on the basis of the government circular at Annexure B to this petition in contravention of the condition granted by the exemption order in that case as to only residential use of the exempted land in question. This Court ordered regularisation of construction of such shops on payment of Rs. 1000 per shop towards the cost for such regularisation.

5. Sitting as a single Judge, I am bound by the aforesaid unreported ruling of this Court at Annexure L to this petition. Even otherwise, I am in respectful agreement therewith. If shops are constructed for beneficial use of the residential blocks raised by the petitioner-society in terms of the government circular at Annexure B to this petition, the condition regarding use of the disputed lands only for residential purpose deserves to be modified and the construction of shops deserves to be regularised accordingly on the very terms

by which such condition was modified and regularised by the judgment of this Court at Annexure L to this petition. In that view of the matter, the construction of 7 shops made by the petitioner deserves to be regularised on payment of Rs. 1000 per shop as the cost of regularisation.

6. It is not in dispute that the petitioner raised in all 1018 dwelling units as against the permitted 300 dwelling units in the disputed lands. It is not the case of the respondent that the area of the dwelling units in any case has exceeded 200 square meters. It cannot be gainsaid that the avowed object of the Act is to provide as many residential accommodations as possible, if possible, to weaker sections of the society. The exemption order stipulated the condition of restricting grant of plots to each member not exceeding 200 square meters. The stipulation was for construction of 300 dwelling units. It is not the case of the respondent that the society has constructed 1018 dwelling units for the affluent class of people. On the contrary, a reasonable inference would arise from the fact that, as against allotment of a plot of land not exceeding 200 square meters, what is done is allotment of a flat. That would go to show that the society has as its members persons not belonging to the affluent class. Its members might at the most be belonging to the middle income group. Looking to the present standard of living, the middle income group is not far above the lower income group (the weaker section of the society). It can therefore be safely assumed in favour of the petitioner that it has furthered the avowed object of the Act providing more dwelling units to members of slightly above the weaker sections of the society.

7. It is however true, as rightly submitted by learned Assistant Government Pleader Shri Uraizee for the respondent, that the petitioner ought to have obtained the necessary modification in the order at Annexure C to this petition. However, in view of my aforesaid discussion, I am of the opinion that construction of more dwelling units deserve to be regularised on payment of penalty by the petitioner at the rate of Rs. 1000 for each additional dwelling unit.

8. I am supported in my aforesaid view by the ruling of this Court in the case of Shamjibhai Bhanjibhai Patel v. The Competent Authority, ULC, Surat and another reported in 1995(1) 36(1) G.L.R. 742. In that case more dwelling units were constructed than what was stipulated in the permission granted by the order under sec. 21(1)

of the Act. Such construction of additional dwelling units was regularised by imposing suitable penalty on the petitioner in that case.

9. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition deserves to be quashed and set aside on condition of payment by the petitioner the cost of regularisation at the rate of Rs. 1000 per shop and as the penalty for regularisation Rs. 1000 per additional dwelling unit. As pointed out hereinabove, 7 shops have been constructed and 718 dwelling units have been additionally constructed. The petitioner will have therefore to pay in all Rs. 7,25,000/- for the cost and the penalty for regularisation.

10. In the result, this petition is accepted. The impugned order passed by and on behalf of the State Government (the respondent herein) on 2nd March 1995 at Annexure A to this petition is quashed and set aside on condition of payment of Rs. 7,25,000/- by the petitioner to the respondent by means of an Account Payee cheque to be drawn in the name of the Secretary, Revenue Department of the Government of Gujarat on or before 31st December 1996. If such amount is not paid within the stipulated time-limit, this judgment will be liable to be set at naught automatically and this petition will be liable to be rejected automatically. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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